

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**DUNIESKY HERNANDEZ ALVEREZ      CASE NO. 6:20-CV-01361 SEC P**

**VERSUS**

**JUDGE ROBERT R. SUMMERHAYS**

**CHAD WOLF, ET AL**

**MAGISTRATE JUDGE WHITEHURST**

**MEMORANDUM ORDER**

Before the Court is a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (rec. doc. 1) filed by *pro se* Petitioner Duniesky Hernandez Alvarez (Alvarez). Alvarez included a request that he not be transferred out of the jurisdiction of the ICE New Orleans Director during the pendency of this proceeding, which the Court construes as a Motion for Temporary Restraining Order (“TRO”).

**I.      Temporary Restraining Order**

Rule 65 of the Federal Rules of Civil Procedure provides, in pertinent part, as follows:

- (1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
  - (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
  - (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Alvarez does not allege that any immediate or irreparable injury, loss, or damage would occur without the TRO.

Alvarez's physical presence in this district is not required for the adjudication of his Petition. His transfer out of the Western District of Louisiana or the jurisdiction of the ICE New Orleans Director would not destroy the Court's jurisdiction over his habeas claim. Jurisdiction attaches upon filing a habeas petition, and it is not destroyed upon the subsequent transfer or custodial change of the petitioner. *See McClure v. Hopper*, 577 F.2d 938, 939-40 (5th Cir. 1978), *cert. denied*, 439 U.S. 1077 (1979).

Additionally, § 2241 petitions regarding *Zadvydas* claims and the legality of detention pending removal are regularly adjudicated on the briefs without the need for in-person hearings and because Alvarez is proceeding *pro se*, there is no issue regarding his ability to meet with counsel.

Moreover, claims regarding prison transfers are generally not cognizable under § 2241. *See Greenhill v. Meniffee*, 202 F. App'x 799, 800 (5th Cir. 2006) (claim not cognizable under § 2241 because prisoners lack a constitutionally protected interest in where they are incarcerated); *Zapata v. United States*, 264 F. App'x 242, 243-44 (3d Cir. 2008) (district court lacked jurisdiction over a § 2241 petition that challenged a transfer). There is no protected liberty interest in being housed in a particular facility. *Armendariz-Mata v. Lappin*, 157 F. App'x 767 (5th

Cir. 2005) (citing *Yates v. Stalder*, 217 F.3d 332, 334 (5th Cir. 2000)). Because Alvarez does not allege that he faces any immediate and irreparable injury, loss or damage, and because he provides no legal justification to enjoin ICE from moving him to another facility, Petitioner's Motion for TRO to prohibit his transfer out of the jurisdiction of the ICE New Orleans Director is denied.

## **II. Conclusion**

Accordingly,

**IT IS ORDERED** that Alvarez's Motion for Temporary Restraining Order be **DENIED**.

THUS DONE in Chambers on this 27<sup>th</sup> day of October, 2020.



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**Carol B. Whitehurst**  
**United States Magistrate Judge**